IN THE

# Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-9161

**SPENCER SCHWARTZ,**

*Petitioner,*

**vs.**

**PEOPLE OF THE STATE OF ILLINOIS,**

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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## CASES AND AUTHORITIES

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OPINIONS IN THE COURT BELOW

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The opinion was filed by the Supreme Court of Illinois on October 1, 1976 and is reported at 64 Ill. 2d 275, 356 N.E. 2d 8 (1976). Copies of the trial court

opinion and the opinion of the Supreme Court of Illinois are reproduced in the Appendix appended hereto, Supra at 1a, 8a.

## JURISDICTIONAL STATEMENT

Petitioner seeks review of the judgment and order of the Supreme Court of Illinois dated and entered on October 1, 1976. No petition for rehearing was filed. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §1257(3).



## QUESTIONS PRESENTED FOR REVIEW

The questions presented for review in this petition are whether Illinois Revised Statutes, ch. 4, §12 (1973), dealing with the adoption and placement of children, is unconstitutional because it regulates adoptions in terms so vague that persons of common intelligence must necessarily guess at their meaning and would reasonably differ in their opinion as to its application, and whether said statute is unconstitutional because it is overbroad in that it restricts or proscribes legal services essential to the adoption process.

## STATUTES

The petitioner was charged in two complaints with violating Ill. Rev. Stat. ch. 4, §12-5, which establishes penalties for the illegal placement of children. The relevant sections of said statute are set out below.

Illinois Revised Statutes, ch. 4, §12, at 98, 99 (1973):

"§12-1. Receipt of compensation for placing out prohibited - Exception

No person and no agency, association, corporation, institution, society, or other organization, except a child welfare agency as defined by the 'Child Care Act', approved July 10, 1957, as now or hereafter amended, shall request, receive or accept any compensation or thing of value, directly or indirectly, for placing out of a child.

"12-3. 'Placing out' defined



As used in this Act the term 'placing out' means to arrange for the free care of a child in a family other than that of the child's parent, stepparent, grandparent, brother, sister, uncle or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care.

"§12-4. Certain payments of salaries and medical expenses not prevented.

The provisions of this Act shall not be construed to prevent the payment of salaries or other compensation by a licensed child welfare agency, as that term is defined by the 'Child Care Act', approved July 10, 1957, as now or hereafter amended, to the officers or employees thereof; nor shall it be construed to prevent the payment by a person with whom a child has been placed out of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth of such child, if such payment is made to the physician or hospital who or which rendered the services or to the natural mother of the child or to prevent the receipt of such payment by such physician, hospital, or mother.

"§12-5. Violations.

Any person, agency, association,

corporation, institution, society, or other organization violating the provisions of this Section shall be guilty of illegal placement of children and upon first conviction for an offense under this Act shall be guilty of a Class A misdemeanor; and upon conviction for any subsequent offense under this Act shall be guilty of a Class 3 felony."

STATEMENT OF FACTS

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On September 4, 1974, two complaints were executed against defendant-petitioner Spencer Schwartz by the State of Illinois. Complaint No. G 401228 charged:

> "SPENCER SCHWARTZ has, on or about September 4, 1974 at 111 East Wacker Drive, Chicago, Illinois committed the offense of Illegal Placement of Children in that he did request from one MICHAEL RICHARDSON (AKA Don Cote) compensation (to-wit: approximately $6,500.00 in United States Currency) for placing out a child. Furthermore, said SPENCER SCHWARTZ is not a Child Welfare Agency or an authorized representative of said agency and furthermore, $4,500.00 of said compensation is above the reasonable and



> actual medical fees or hospital charges to be incurred and above the legal expenses to be incurred, in violation of Chapter 4, Section 12-5, ILLINOIS REVISED STATUTES."

Complaint No. G 401229 charged:

> "SPENCER SCHWARTZ has, on or about September 4, 1974 at 111 East Wacker Drive, Chicago, Illinois committed the offense of Illegal Placement of Children in that he did receive from one MICHAEL RICHARDSON (AKA Don Cote) compensation (to-wit: $500.00 in United States Currency) as a deposit for placing out a child. Said $500.00 being partial payment of $6,500.00 in United States Currency of which approximately $4,500.00 of said $6,500.00 is above the reasonable medical fees or hospital charges and legal fees to be incurred. Furthermore, said SPENCER SCHWARTZ is not a Child Welfare Agency or an authorized representative of said agency, in violation of Chapter 4, Section 12-5 ILLINOIS REVISED STATUTES."

Attorney Schwartz filed motions in the Circuit Court of Cook County, Illinois to dismiss the complaints for reason that Ill. Rev. Stat., ch. 4, §12 was vague, indefinite, uncertain and overbroad, all in

violation of the Fourteenth Amendment to the United States Constitution. The defendant also alleged that the complaints did not allege facts sufficient to apprise him of the nature of the charges, the complaints did not allege intent as a necessary element of the crime charged, and the complaints contained unnecessary and prejudicial allegations.

The trial court for the Circuit Court of Cook County found that Ill. Rev. Stat., ch. 4, §12-1 was vague because it did not prescribe a fixed standard by which a reasonable person could be guided and because it lacked the precision essential to afford due process, and further found that said section was overbroad because it proscribed legal services which were lawful and necessary in the area of adoption and child care. The trial court



therefore held Ill. Rev. Stat., ch. 4, §12-1 to be unconstitutional and allowed the motion of the defendant to dismiss the complaints. The trial court stated and held (Appendix, at 2a, 3a.):

> "Applying these rules to the statute in question, it is apparent that Section 12-1 does not satisfy their requirements. The phrases 'placing out of a child', 'arranging for the free care', or 'for the purpose of providing care', convey no precise guide which a person can follow or understand with any assurance that he is not violating the law.
>
> * * * *
>
> "The use and meaning of those phrases are practically unlimited. The activities which they include and to which they may refer cannot be easily understood. Those phrases prescribe no fixed standard by which a reasonable person can be guided and lack the precision essential to afford due process of law.
>
> "A reasonable construction of Section 12 is that fees received by an attorney for legal services rendered in an adoption or child care case are prohibited and subjects him to a criminal prosecution. It is unrea-

> sonable to presume that the Legislature intended by this statute to reach the conduct of attorneys who render legal services in this area. Such overbreadth is constitutionally impermissible."

The trial court further held that the complaints were defective and therefore void because allegations therein bearing on the reasonableness of certain compensation were unnecessary and prejudicial. The trial court also stated and held (Appendix, at 6a.):

> "It cannot, therefore, be determined from the complaints, or from the statute, the reason by which the State has concluded that $4,500.00 of the $6,500.00 fee is 'above the reasonable and actual medical fees or hospital charges and legal fees to be incurred.' The conclusion of the State that any amount of compensation which is requested, or received, up to and including $2,000.00, is reasonable and therefore not violative of Section 12-1, has no basis in law.
>
> "The presence of these allegations in the complaints is not merely harmless surplusage, but is unnecessary and prejudicial. Their presence renders the complaints defective and, therefore, void."



The trial court therefore dismissed both complaints.

The State of Illinois appealed directly to the Supreme Court of Illinois pursuant to Ill. Rev. Stat., ch. 110A, §302(a). Subsequent to the filing of briefs and oral argument, the Supreme Court of Illinois on October 1, 1976, found that Ill. Rev. Stat., ch. 4, §12-1 was not unconstitutionally vague or overbroad, reversed the judgment of the trial court and ordered the case remanded for further proceedings. (Appendix, at 8a.) This petition for certiorari ensued.

## REASONS FOR GRANTING THE WRIT OF CERTIORARI

The questions presented for review in this petition are whether ILLINOIS REVISED STATUTES, ch. 4, §12 (1973), dealing with the adoption and placement of children, is unconstitutional because it regulates adoption in terms so vague that persons of common intelligence must necessarily guess at their meaning and would reasonably differ in their opinion as to its application, and whether said statute is unconstitutional because it is overbroad in that it restricts or proscribes legal services essential to the adoption process.

The complaints at issue charged that the defendant, attorney Spencer Schwartz,



received the sum of $6,500.00 for placing out a child and that $4,500.00 of said amount was above the reasonable medical and legal expenses to be incurred, in violation of the statute at issue. (Brief of Petitioner, Supra at 6, 7.) The statute itself does not mention legal expenses and does not provide any formula or standard for determining the reasonableness of either legal or medical fees. Section 12-1 only provides as follows:

> "§12-1. Receipt of compensation for placing out prohibited - Exception
>
> No person and no agency, association, corporation, institution, society, or other organization, except a child welfare agency as defined by the 'Child Care Act', approved July 10, 1957, as now or hereafter amended, shall request, receive or accept any compensation or thing of value, directly or indirectly, for placing out of a child."

"Placing out" is allegedly defined in Section 12-3 which provides:

> "As used in this Act the term 'placing out' means to arrange for the free care of a child in a family other than that of the child's parent, stepparent, grandparent, brother, sister, uncle or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care."

Section 12-5 of said statute provides that violation of Section 12 is a Class A misdemeanor, a criminal offense, for which the maximum punishment is imprisonment for one year and a fine of $1,000.00.

The trial court dismissed the complaints on the grounds that the statute in question failed to provide a precise guide by which an attorney might know whether he is violating the law. The trial court held (Appendix, at 2a, 3a.):

> "The phrases 'placing out of a child', 'arranging for the free care', or 'for the purpose of providing care', provide no precise guide which a person can follow or understand with any assurance that he is not violating the law. * * * The use and meaning of those phrases



> are practically unlimited. The activities which they include and to which they may refer cannot be easily classified or understood. Those phrases prescribe no fixed standard by which a reasonable person can be guided and lack the precision essential to afford due process of law."

The statute was adopted by the General Assembly in 1955. There are no reported appeals from convictions obtained pursuant to it and thus no prior judicial opinions which might guide attorneys involved in the practice of adoption law. Such guidelines are important in determining whether a statute is unconstitutionally vague. (Gooding v. Wilson, 405 U.S. 518, 92 S. Ct. 1103 (1972).) Compounding this problem of interpretation is the use in the statute of words and phrases which do not have a definitive and specific meaning at common law, such as "placing out", "arranging for the free care",

and "for the purpose of providing care." Thus the State of Illinois attempted to create a penal statute for a new offense in order to curtail abuses in an increasingly significant area of activity, i.e., the adoption of children, but failed to adequately delineate the proscribed conduct. This Court has consistently held that such a statute must satisfy a very high standard of clarity in order to avoid being found void for vagueness. In Winters v. People of the State of New York, 333 U.S. 507, 518, 68 S. Ct. 665, 670 (1948), this Court declared vague and therefore unconstitutional a statute prohibiting the massing of stories which might incite crime, stating:

> "The standard of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanctions for enforcement."



Certainly this high standard should be strongly enforced where, as here, the vagueness of a criminal statute is and will continue to be a continuous threat to the livelihood of attorneys and others involved in the care and adoption of children. All those involved in this area of endeavor will, unless this statute is found void, be exposed to arbitrary prosecution by prosecutors who can interpret the statute to accommodate almost any aspect of child care and adoption.

In Lanzetta v. State of New Jersey, 306 U.S. 451, 452-458, 59 S. Ct. 618, 619-621 (1939), this Court found the following statute to be unconstitutional for reasons of vagueness and uncertainty:

> "Any person not engaged in any lawful occupation, known to be a member of any gang consisting of two

> or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime, in this or in any other State, is declared to be a gangster * * *".

In that opinion, this Court established the following standard (Lanzetta v. N. J., supra at 619.):

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids. The applicable rule is stated in Connally v. General Const. Co., 269 U.S. 385, 391, 46 S. Ct. 126, 127, 70 L.Ed. 322: 'That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.'".



ILL. REV. STAT. ch. 4, §12 does not satisfy that standard. It uses words such as "placing out", "arranging for the free care", and "purpose of providing care", all of which have many possible and probable connotations. Even the word "child" is not definitive as there is no agreement as to whether the word is premised on birth or includes a being in ventre sa mere. (See Appendix at 3a: Contrast Webster's New World Dictionary of the American Language, 1960 Ed., p. 254, with The Random House Dictionary of the English Language, 1967 Unabridged Ed., p. 256.) In fact, the failure of the Illinois Supreme Court to affirm the trial court's finding of unconstitutionality does violence to its own standards of review as restated in Baim v. Fleck, 406 Ill. 193, 199, 92 N.E. 2d 770, 775

(1970), where the plaintiff challenged use of public funds for enforcement of a statute, with the court stating and holding:

> "In holding that the law failed to furnish an intelligible standard of conduct we observed: 'In order that a statute may be held valid, the duty imposed by it must be prescribed in terms definite enough to serve as a guide to those who have the duty imposed upon them. Such definiteness may be produced by words which have a technical or other special meaning well enough known to permit compliance therewith or words which have an established meaning at common law through decisions; but if the duty is imposed by statute through the use of words which have not yet acquired definiteness or certainty and which are so general and indefinite that they furnish no such guide, the statute must be declared to be invalid." (Emphasis added.)

The State herein tacitly recognized the infirmities of the statute at issue because it attempted to provide some standards and guidelines in its complaints, alleging that only a portion of the com-



pensation paid to defendant was" * * * above the reasonable and actual medical fees or hospital charges to be incurred and above the legal expenses to be incurred * * *" and was "* * * above the reasonable medical fees or hospital charges and legal fees to be incurred." (Brief of Petitioner, supra at 6, 7.)

The State disregarded the definitional problems discussed herein, but did attempt in the complaints to clarify the amounts and areas of service covered by the statute. Apparently the State arbitrarily selected $2,000.00 to be the maximum reasonable amount allowed to be paid under the statute for hospital and medical expenses and attorney's fees in any adoption case because the State charged that only the amount in excess of $2,000.00 was illegal. This amount

is arbitrary because the statute does not establish any fixed amount. The allegation is clearly not one to be proved by evidence as to prevailing fees and costs of this "child" because this transaction involved an unborn child whose medical and legal expenses obviously could not have been specifically established at the time the complaints were filed. The State has taken advantage of the vagueness of this statute to attempt to prosecute an attorney for charging unreasonable fees when in fact the reasonableness of the medical and legal fees involved can not be determined until the birth occurs, the hospitalization and medical treatment accompanying the birth ends, and the adoption process is brought to a successful completion. One could as easily speculate that medi-



cal complications or legal difficulties could create expenses far exceeding $2,000.00. In reality, the State is attempting to prosecute defendant for exceeding an arbitrary standard in a situation where possible violation of that arbitrary standard could not be determined until some indefinite time in the future.

Clearly the establishment by the State of an arbitrary standard on medical and legal fees cannot cure the vagueness of the statute because the attorney involved could not be aware of the standard until after the violation was charged. This statute violates the holding of this Court in Lanzetta v. State of New Jersey, 306 U.S. 45, 452-458, 59 S. Ct. 618, 619-621 (1939), where this Court stated and held:

"If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it.

* * *

"It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression." (Citations omitted.)"

The vagueness and confusion surrounding this statute are further evident in the fact that the statute makes no mention of the provision of legal services or the reasonableness of the fees therefore, whereas the complaints allege that the amounts charged exceeded "* * * the reasonable medical fees or hospital charges and legal fees to be incurred * * *". (Brief of Petitioner, supra at 6, 7.) The trial court found (Appendix, at 6a.):

"* * * the conclusion of the State



that any amount of compensation which is requested or received, up to and including $2,000.00, is reasonable and therefore not violative of Section 12-1, has no basis in law."

The State attempted, by setting legal fee standards, to supplement the statute in order to avoid the vagueness inherent in the language of the statute. A statute which is definitive only by virtue of charges in a complaint is a trap not only for attorney Schwartz but for all other attorneys, counselors, social workers and others involved in the process of adoption. Such persons cannot know from examination of the statute at issue whether compensation is permissible and what amount of compensation is reasonable. Such vague standards cannot be tolerated in so important an area of concern. The milieu in which children are

born, treated, educated and developed is a complex one which includes services rendered by many persons in a wide range of occupations. A statute such as that at issue which attempts to regulate any aspect of that complex area must be clearly drawn in order to avoid harrassment of the persons involved therein.

It is clear that regulation of the adoption process is necessary in order to protect the welfare of the children. As societal attitudes change and the present care and adoption system is increasingly strained by the significant decrease in the number of adoptable children, regulation of care and adoption will be even more important. However, such regulation must be clear and definitive so that men of common intelligence need not guess at its meaning and differ



as to its application. Statutes intended to correct such evils do not advance the cause of justice if they themselves contain the seeds of injustice.

The State and the Supreme Court of Illinois relied on Goodman v. District of Columbia, 50 A.2d 812 (D.C. Mun. Ct. App. 1947), to support the constitutionality of this statute, but that case differs significantly from this matter. Most significantly, no constitutional issues were raised in that matter. Secondly, that statute is not identical to the one at issue herein. Thirdly, the defendant therein was convicted of placing a child for adoption without a license. Petitioner submits that there is a significant difference between prosecution for performing an otherwise legal action without a license and prosecution for

committing an illegal act. The impact on an attorney of a conviction under the latter charge carries risk of an added penalty, beyond the statutory penalty, under the attorney disciplinary system. Finally, in the cited case, the Court noted at 814 that the defendant "* * * performed the final act of placement by accepting the child from the arms of its mother and physically handing it over to the adopting father." (Goodman v. D.C. supra at 814.) In contrast, this case involves legal services, and the fees charged therefor, rendered by an attorney prior to the birth of the child. The statute governing this attorney's actions is so vague that the judge at the trial level was unable to determine its meaning and found it unconstitutional.

The trial judge also found ILL. REV.



STAT. ch. 4, §12, to be overbroad and thus unconstitutional because it deprived persons charged with violation of said statute of due process of law. The trial court aptly stated the overbreadth defect of the statute (Appendix, at 4a.):

> "Section 12-1 prohibits the request for, or the receipt of any compensation by anyone except a child welfare agency, for placing out of a child. Then by Section 12-4, it excludes from the provisions of Section 12-1 certain recipients of compensation and certain medical and hospital expenses. No provision appears which exempts fees received by an attorney for handling or arranging an adoption or child care case. It should be noted here, that despite the absence of any reference to legal fees the complaints in question charge that the violations are the request for, and the receipt of unreasonable compensation.
>
> "The language of the statute in question, given its normal meaning, can quite clearly be held to apply to practicing attorney who receives a fee for handling or arranging for an adoption or a child care case. Legal services involved in such matters could easily be construed

to be a part of the 'placing out of a child' or as 'arranging for the free care of a child.' There can be no question but that an attorney's right to practice law is conduct that is protected by the Constitution. Furthermore, every person has a right to avail himself to the services of an attorney, and that conduct is also constitutionally protected.

"A reasonable construction of Section 12 is that fees received by an attorney for legal services rendered in an adoption or child care case are prohibited and subjects him to a criminal prosecution. It is unreasonable to presume that the Legislature intended by this statute to reach the conduct or attorneys who render legal services in this area. Such overbreadth is constitutionally impermissible."

Such overbreadth is a natural consequence of a statute which fails to set clear and definitive standards. Where a statute is so vague that persons of common intelligence must necessarily guess at its meaning, it is also likely that the statute will proscribe both conduct intended to be prohibited and conduct



legally permissible. Such overbreadth is unconstitutional because it proscribes certain individual freedoms and thus violates the Fourteenth Amendment to the United States Constitution.

It is common knowledge that the complexities of adoption law frequently necessitate use of the services of an attorney to protect the rights of the involved parties and that attorneys involved in such a practice ordinarily charge a fee for their services. A reasonable person, as pointed out by the trial judge, could interpret this statute to prohibit both such services and the fees charged therefor. Clearly this is a consequence which the Illinois legislature did not intend and which is forbidden by the Constitution. The statute is so broad as to interfere with the

right of an attorney to practice law and with the right of parties to obtain representation before the courts.

The State again tacitly recognized the overbreadth infirmity when it attempted in the complaints to establish a monetary standard which permitted legal representation as long as the combined fee for legal and medical services was less than $2,000.00. The State argued that the statute at issue does not on its face prohibit legal services, but found it necessary to establish standards in the complaints in order to avoid proscribing all such services. This inference of the reasonableness of $2,000.00 as established by the State conflicts sharply with the flat proscription of the statute, but the language of the complaint cannot remedy the defects in the statute.



(Brief of Petitioner, supra at 23.)

This statute thus plainly conflicts with the standards established in Lanzetta v. State of New Jersey, 306 U.S. 451, 452-458, 59 S. Ct. 618, 619-621 (1939), where this Court considered a challenged statute which provided penalties for persons found to be gangsters. This Court found the statute to be overbroad and thus unconsititutional, stating at 621:

> "The latter interpretation would include some obviously not within the statute and would exclude some plainly covered by it."

The statute therein was void because it included within its coverage persons which the legislature did not intend to affect, just as this statute inferentially bars legal representation which is plainly permissible. For these reasons, this statute which potentially affects

a large number of persons involved in the areas of child care and adoption is over-broad and thus unconstitutional.

## CONCLUSION

It is respectfully submitted that for the reasons stated the petition for a writ of certiorari to review the judgment of the Supreme Court of Illinois should be granted.

Respectfully submitted,

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# APPENDIX

# APPENDIX A

## OPINION OF
## THE HONORABLE GEORGE DOLEZAL,
## CIRCUIT COURT OF COOK COUNTY, ILLINOIS

**Filed January 27, 1975**

The defendant, an attorney, is charged in two complaints with the offense of illegal placement of children in violation of Section 12-1, Ch. 4, Illinois Revised Statutes. That section provides:

> "No person and no agency, association, corporation, institution, society, or other organization, except a child welfare agency as defined by the 'Child Care Act' approved July 10, 1957, as now or hereafter amended, shall request, receive or accept any compensation or thing of value, directly or indirectly, for placing out of a child."

The defendant moved to dismiss the complaints charging that Section 12-1, Ch. 4, Illinois Revised Statutes is unconstitutional and void in that it is vague, indefinite and uncertain and is also overbroad. This section, the defendant contends, fails to set up an intelligible standard of duty and violates the due process clauses of the State and Federal Constitutions (Ill. Art. 2, S2, U.S. Amend. 14).

The remaining grounds of the defendant's motion are that the complaints are defective for failure to plead with sufficient particularity necessary to apprise the defendant of the nature and cause of the accusation against him; that they fail to state an offense in that they contain unnecessary and prejudicial allegations.

The court will first consider the attack on the constitutionality of Section 12-1. The defendant's allegation of

vagueness is directed at three particular phrases: (1) "placing out of a child" describing the service or act performed by the person, (2) "arrange for the free care", describing the purpose of the service or act; and (3) "child", describing the person who is placed out.

It is well settled that the duty imposed by a statute must be described in terms definite enough to serve as a guide those who must comply with it. Statutes which either forbid or require the doing of an act in terms so vague that men of common intelligence must necessarily guess at their meaning and differ as to their application do not constitute due process of law.

The standards of constitutional specificity require when criminal penalties are to be imposed are even more stringent. A criminal statute may not rest upon an uncertain foundation. *People* v. *Cooper,* 366 Ill. LL3 (1937); *Connally* v. *General Construction Co.,* 269 U.S. 385, 46 S. Ct. L26. The Supreme Court in *Lanzetta* v. *New Jersey,* 306 U.S. 45L, 59 S. Ct. 618, 619 (1939), stated it thusly:

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.
>
> . . . That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement. . . ."

Applying these rules to the statute in question, it is apparent that Section 12-1 does not satisfy their requirements. The phrases "placing out of a child", "arranging for the free care", or "for the purpose of providing care", convey no precise guide which a person can follow or understand with any assurance that he is not violating the law. The definition of the term "placing out" which appears in Section 12-3 offers little help in understanding what is meant by that phrase. That definition contains the phrases "arranging for the free care" and "for the purpose of providing care", neither of which is susceptible to precise definition or understanding. The laudable object of the law, namely, to prevent profiteering in the area of placement of children, cannot be accomplished by simply making illegal all requests for, or receipts of, compensation for the "placing out" of a child, or "arranging for the free care", or for the "purpose of providing care." The use and meaning of those phrases are practically unlimited. The activities which they include and to which they may refer cannot be easily classified or understood. Those phrases prescribe no fixed standard by which a reasonable person can be guided and lack the precision essential to afford due process of law.



Equally damning is the failure of Section 12-1, or any other section, to define what is meant by the word "child." No guidelines are set out by which it can be determined whether an unborn child is included within its meaning. It appeals from the pleadings and arguments in this case that the unnamed child in question was unborn. The Illinois Adoption Act (Ch. 4, Illinois Revised Statutes 1973) offers a definition of the word child which affords little help in this case. Section 9.1-1 defines the word "child" as a "person under legal age subject to adoption." It also appears from the Adoption Act that no child can be adopted until after its birth. It is, therefore, not readily ascertainable whether an unborn child falls within the proscriptions of Section 12-1.

The defendant also contends that Section 12-1 is unconstitutional because of overbreadth. The concept of over-

breadth is distinct from that of vagueness, although they overlap in this case, and rests on principles of substantive due process which forbid the prohibition of certain individual freedoms.

The primary issue in an overbreadth situation is whether the language of the statute, given its normal meaning is so broad that its sanctions may apply to conduct protected by the Constitution. The issues of reasonable notice and adequate standards are intertwined in the issue of overbreadth in the sense that a practicing attorney cannot readily discern whether his involvement in an adoption or child care case violate Section 12-1 and will cause him to become enmeshed in a criminal prosecution.

Section 12-1 prohibits the request for, or the receipt of any compensation by anyone except a child welfare agency, for placing out of a child. Then by Section 12-4, it excludes from the provisions of Section 12-1 certain recipients of compensation and certain medical and hospital expenses. No provision appears which exempts fees received by an attorney for handling or arranging an adoption or child care case. It should be noted here, that despite the absence of any reference to legal fees the complaints in question charge that the violations are the request for, and the receipt of unreasonable compensation.

The language of the statute in question, given its normal meaning, can quite clearly be held to apply to practicing attorney who receives a fee for handling or arranging for an adoption or a child care case. Legal services involved in such matters could easily be construed to be a part of the "placing out of a child" or as "arranging for the free care of a child." There can be no question but that an attorney's right to practice law is conduct that is protected by the Constitution. Furthermore, every



person has a right to avail himself to the services of an attorney, and that conduct is also constitutionally protected.

A reasonable construction of Section 12 is that fees received by an attorney for legal services rendered in an adoption or child care case are prohibited and subjects him to a criminal prosecution. It is unreasonable to presume that the Legislature intended by this statute to reach the conduct or attorneys who render legal services in this area. Such overbreadth is constitutionally impermissible.

Due process requires fair notice and proper standards for adjudication and statutes must be sufficiently definite to give reasonable notice of prohibited conduct to those who wish to avoid its penalties and to apprise the trier of the facts of standards for the determination of guilt. Section 12-1 fails to provide fair notice to those who may fall within its proscriptions, fails to set forth proper standards for adjudication, and suffers from overbreadth. I therefore find Section 12 to be unconstitutional.

Though it may be unnecessary, in view of my holding the statute to be unconstitutional, to reach the other matters raised in the defendant's motion to dismiss, I feel constrained to rule on one of those points.

Section 12-1 provides in pertinent part:

> "No person, . . . shall request, receive or accept any compensation or thing of value . . . for placing out of a child." (Emphasis supplied.)

Section 12-1 does not therefore set out any standards as to what is reasonable or unreasonable compensation. Nor does Section 12-1 indicate that the request for, or the receipt of, unreasonable compensation causes of a violation of its provisions.

Complaint No. G 401228 charges that the defendant committed the offense of illegal placement of children in that he requested compensation in the amount of $6,500.00 and:

> "Furthermore $4,500.00 of said compensation is above the reasonable and actual medical fees or hospital charges to be incurred and above the legal expenses to be incurred."

Complaint No. G 401229 charges the defendant with the same offense in that he received $500.00 which was a partial payment on the $6,500.00 amount:

> "Of which approximately $4,500.00 of said $6,500.00 is above the reasonable medical fees or hospital charges and legal fees to be incurred."

I note once again, that although the statute contains no reference to, or exemption for, legal fees the State for some reason alleges that "reasonable" legal fees are proper and exempt. No provision of the statute, however, sets out what would be a "reasonable" medical or legal charge. It cannot, therefore, be determined from the complaints, or from the statute, the reason by which the State has concluded that $4,500.00 of the $6,500.00 fee is "above the reasonable and actual medical fees or hospital charges and legal fees to be incurred." The conclusion of the State that any amount of compensation which is requested, or received, up to and including $2,000.00, is reasonable and therefore not violative of Section 12-1, has no basis in law.

The presence of these allegations in the complaints is not merely harmless surplusage, but is unnecessary and prejudicial. Their presence renders the complaints defective and, therefore, void.



For each of the above stated reasons, it is the opinion of the court that the defendant's Motion to Dismiss the complaints should be allowed.

# APPENDIX B

Docket No. 47900—Agenda 49—May, 1976.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. SPENCER SCHWARTZ, Appellee.

MR. JUSTICE RYAN delivered the opinion of the court:

Defendant, Spencer Schwartz, an attorney, was charged with requesting and partly receiving compensation for placing out a child for adoption in violation of the Adoption Act (Ill. Rev. Stat. 1973, ch. 4, par. 12—5). The circuit court of Cook County granted defendant's motion to dismiss the complaints on the ground that section 12—1 of the Adoption Act is unconstitutional. The circuit court also found that the complaints in question were "defective and, therefore, void." A direct appeal to this court was taken pursuant to our Rule 302(a). 58 Ill. 2d R. 302(a).

The basis of the circuit court's finding of unconstitutionality was its determination that section 12—1 is vague, uncertain and overbroad. Section 12—1 provides:

> "No person and no agency, association, corporation, institution, society, or other organization, except a child welfare agency as defined by the 'Child Care Act' *** shall request, receive or accept any compensation or thing of value, directly or indirectly, for placing out of a child."

Section 12—3 of the Act defines the term "placing out."

> "As used in this Act the term 'placing out' means to arrange for the free care of a child in a family other than that of the child's parent, stepparent, grandparent, brother, sister, uncle or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care."

The circuit court specifically found that the phrases "placing out of a child," "arranging for the free care" and "for the purpose of providing care" were so obscure that



they failed to set forth constitutionally sufficient standards of conduct. The circuit court also found the statute defective for the reason that it failed to define the word "child."

Though this is the first case to test the constitutionality of the statutes in question, the principles involved are well settled. A criminal statute violates the requirement of due process of law if it fails to adequately give notice as to what action or conduct is proscribed. (*People v. Vandiver* (1971), 51 Ill. 2d 525.) Impossible standards of specificity, however, are not required. (*Jordan v. De George* (1951), 341 U.S. 223, 231, 95 L. Ed. 886, 71 S. Ct. 703; *People v. Dednam* (1973), 55 Ill. 2d 565.) As stated by Mr. Justice Marshall, "Condemned to the use of words, we can never expect mathematical certainty from our language." (*Grayned v. City of Rockford* (1972), 408 U.S. 104, 110, 33 L. Ed. 2d 222, 228-29, 92 S. Ct. 2294.) When called upon to decide a vagueness question, a court will assume, absent contrary legislative intent, that the words of the statute have their ordinary and popularly understood meanings. (*Farrand Coal Co. v. Halpin* (1957), 10 Ill. 2d 507, 510.) In addition to the language used, consideration is given to the legislative objective and the evil the statute seeks to remedy. (*People v. Dedham* (1973), 55 Ill. 2d 565.) A statute enjoys a presumption of constitutionality. *Livingston v. Ogilvie* (1969), 43 Ill. 2d 9, 12.

With these principles in mind, we first consider the issue of vagueness. In contending that the statutes in question are vague and indefinite, defendant primarily questions the definition of "placing out" in section 12—3 and the lack of a statutory definition of the word "child." Initially, we find no merit in defendant's contention that the term "placing out" is vague as a result of the inclusion of the phrases "arrange for the free care" and "for the purpose of providing care" in the statutory definition.

Sections 12–1 and 12–3 of the Adoption Act simply provide that only a child welfare agency shall request or receive compensation for the placement of children within families other than those listed in section 12–3. All others are prohibited from acting as paid intermediaries in the adoption process. The obvious purpose of the statute is to prevent profiteering in the placement of children and to eliminate so-called "baby markets" and "baby brokers." The phrase "arrange for the free care" adequately describes the conduct the legislature intended to condemn. The final phrase of section 12–3 prevents circumvention of the legislative goal through informal placement agreements which do not contemplate formal adoption proceedings, but which have the same practical effect. Though it is likely that section 12–3 could have been more clearly drafted, we find no ambiguity which would cause men of ordinary understanding to guess as to the nature of the conduct it defines.

Nor do we consider the lack of a statutory definition of the word "child" to be a fatal defect. The trial court found, from the pleadings and arguments, that the unnamed child in question was unborn, and concluded that it could not be determined whether an unborn child falls within the ambit of section 12–1. The State contends that a popularly understood meaning of the word "child" includes an unborn offspring. For support, the State cites the dictionary definition of the word (Webster's Third New International Dictionary 388 (1971)).

We consider that the word "child," as used in sections 12–1 and 12–3 of theAdoption Act, was intended to include unborn offspring. Significantly, the Act does not simply prohibit the actual placement of children by an unlicensed person. Rather, it prohibits the request or receipt of compensation for the placing out of a child. The illegal act thus occurs when an unlicensed person offers to serve as a paid agent to either obtain or dispose of a child.



The Act as written prohibits an agreement that a fee will be paid for the transfer of a yet unborn child as clearly as an arrangement for the compensated placement of a child in being. We cannot presume that the legislature intended to exempt from section 12–1 placement arrangements in which all steps, save delivery, were completed while the child was in gestation. In our view, the clear import of the statute is that the meaning of the word "child" is not restricted to children in being.

We therefore conclude that the circuit court erred in holding section 12–1 of the Adoption Act unconstitutional due to vagueness. We turn next to the lower court's determination that section 12–1 is unconstitutionally overbroad in its scope.

A statutory enactment, though sufficiently clear and precise to withstand a vagueness attack, may nevertheless be impermissibly overbroad if it may reasonably be interpreted to prohibit conduct which is constitutionally protected. (*Grayned v. City of Rockford* (1972), 408 U.S. 104, 33 L. Ed. 2d 222, 92 S. Ct. 2294.) The court found section 12–1 overbroad for the reason that it unreasonably interfered with an attorney's right to practice law. We do not agree.

Section 12–1, when applied to an attorney, would not infringe upon his or her ability to perform legal services. The provision merely establishes that an attorney may not act as a paid intermediary or placement agent for a party desiring to buy or sell a child. As such, the statute treats an attorney in the same manner as any other individual who does not qualify for the exemption contained in section 12–1.

We are unimpressed by the argument that a careful and prudent attorney will be unable to determine from sections 12–1 and 12–3 the extent to which he may perform professional services in an adoption case. A similar

argument was advanced in *Goodman v. District of Columbia*, 50 A.2d 812 (D.C. Mun. Ct. App. 1947), where the court was required to construe a statute similar to the provisions presently in question. The *Goodman* court's response to this contention is equally applicable here:

> "We are told that if defendant is not absolved, no lawyer can feel safe when he is called on to advise or act in an adoption case. *** But we think the careful lawyer will have little trouble in determining what he may lawfully do in such situations. We think even a cursory reading of the statute will tell him how far he may go and where he must stop.
>
> We think it plain that so long as the lawyer gives only legal advice; so long as he appears in court in adoption proceedings, representing either relinquishing or adopting parents; so long as he refrains from serving as intermediary, go-between, or placing agent; so long as he leaves or refers the placement of children and the arrangements for their placement to agencies duly licensed, he is within his rights under the statute." 50 A.2d at 814-15.

We hold that section 12—1 of the Adoption Act is not unconstitutionally overbroad, and, therefore, reverse the decision of the circuit court on this point.

We turn next to a consideration of the sufficiency of the complaints. In pertinent part, the first complaint read as follows:

> "SPENCER SCHWARTZ has, on or about September 4, 1974 at *** committed the offense of Illegal Placement of Children in that he did request from one [name of complainant] compensation (to-wit: approximately $6,500.00 in United States currency) for placing out a child. Furthermore, said SPENCER SCHWARTZ is not a Child Welfare Agency or an authorized representative of



> said agency and furthermore, $4,500.00 of said compensation is above the reasonable and actual medical fees or hospital charges to be incurred and above the legal expenses to be incurred, in violation of Chapter 4, Section 12—5, ILLINOIS REVISED STATUTES."

The second complaint was substantially similar except that it charged that the defendant had received $500 as a deposit toward the placement.

The circuit court found the complaints defective due to the implied conclusion by the State that $2,000 of the requested compensation was reasonable. The State contends that the allegations regarding these amounts were necessarily included to segregate that portion which was compensation for legitimate legal services from the fee charged for placing out the child for adoption. We reverse the circuit court and hold that the complaints in question are valid.

As previously demonstrated, section 12—1 does not prohibit the receipt of compensation for legitimate legal services performed in an adoption case. Additionally, section 12—4 exempts the payment of medical and hospital charges in certain circumstances. It is thus evident that where a lump sum is paid to an attorney in an adoption case a certain amount may legitimately represent attorney fees and expenses and costs which will be disbursed through the attorney. Thus, the entire amount requested may not represent compensation paid for the placing out of the child. It is, therefore, proper for the complaint to allege that some portion of the requested amount is in excess of the allowable legal and medical fees, for if the entire fee fell within the exempted categories no violation of the statute would exist. While it was unnecessary for the State to specify the actual dollar amount of the illegal compensation, we do not consider the inclusion of the specific figure to be harmful or prejudicial to the defendant.

Defendant also challenges the sufficiency of the complaints on two grounds not discussed by the circuit court. First, defendant contends that the complaint failed to adequately inform him of the nature of the charges he faced, and, second, that the complaint is defective for its failure to allege intent.

The complaints in question inform the defendant of the nature of the charges with sufficient specificity to withstand defendant's objections. The complaints inform defendant of the date and location of the alleged offense, the name of the complainant and the acts which constitute the offense. A complaint which charges an offense in the terms of the statute is valid if it provides "notice sufficient to prepare an adequate defense and clarity sufficient to allow pleading a resulting conviction [or acquittal] as a bar to future prosecution arising out of the same conduct." (*People v. Grant* (1974), 57 Ill. 2d 264, 267.) The term "placing out" is specifically defined in section 12–3 of the Act. Therefore, charging the offense in the language of the statute adequately informed defendant of the conduct charged against him. In our view, the instant complaints satisfy these requirements.

Finally, we reject defendant's contention that the complaints are defective due to the lack of an allegation of intent. The clear and obvious intent of the legislature, as evidenced by the language of section 12–1, was to impose liability for the offense of requesting or accepting compensation for placing out children.

The judgment of the circuit court is reversed and this cause is remanded for further proceedings.

*Reversed and remanded.*



# APPENDIX C

## AMENDMENT XIV, SECTION ONE

**All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**